



THE CITY OF NEW YORK  
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**BY ECF**

Hon. James C. Francis, IV  
United States Magistrate Judge  
United States District Court  
500 Pearl Street  
New York, New York 10007

Re: Mark Nunez v. City of New York, et al., 11-CV-5845 (LTS) (JCF)

Your Honor:

We write in connection with Class Plaintiffs' Request for the Clerk to Enter a Certificate of Default Judgment against Defendant Correction Officer Alfredo Negrón, pursuant to Fed. R. Civ. P. 55(a).

City Defendants take no position at this time to Class Plaintiffs' request for the Clerk to enter Default Judgment against defendant Negrón. However, City Defendants do intend to oppose any future motion by Class Plaintiffs to have the Court enter a Default Judgment against defendant Negrón. It is the position of the City Defendants that the granting of a default judgment against Defendant Negrón would not be appropriate at this stage of the litigation as the outcome of the litigation, and more specifically the claims alleged by Plaintiff Mark Nunez, have yet to be determined. *See, Aspen Ins. UK Ltd. v. A & R Able Corp.*, No. 12 Civ. 261, 2013 U.S. Dist. LEXIS 370, at \*3-4, 2013 (S.D.N.Y. Jan. 2, 2013) (denying the default judgment requested by plaintiff for the non-appearing defendant because a default judgment would "prejudice the rights" of the defendant who appeared "and potentially lead to inconsistent results"); *see also, Frow v. De La Vega*, 82 U.S. 552, 554 (1872) (finding that 'a final decree on the merits against the defaulting defendant alone, pending the continuance of the case, would be incongruous and illegal.').

Respectfully submitted,

/s/

Kimberly M. Joyce  
Assistant Corporation Counsel

AGL/m

cc: All Counsel (by ECF)